UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAVERSE THERAPY SERVICES, PLLC, Plaintiff, v. SADLER-BRIDGES WELLNESS GROUP, PLLC, JAMES BOULDING-BRIDGES, HALEY CAMPBELL, Defendants.	CASE NO. C23-1239 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff's Motion for Partial Summary Judgment. (Dkt. No. 46.) Having reviewed the Motion, the Response (Dkt. No. 63), the Reply (Dkt. No. 73), and all other supporting material, the Court DENIES the Motion and sua sponte GRANTS Summary Judgment in favor of Defendants.

BACKGROUND

This case arises from the alleged theft of trade secrets by former employees of Plaintiff Traverse Therapy Services PLLC ("Traverse"). (Complaint ("Compl.") ¶ 1.1.) Traverse offers

counseling and therapy in the mental health and interpersonal relationship fields. (Compl. ¶ 2.1.) Traverse alleges former employees used Traverse's customer list to solicit at least fifty (50) clients and diverted them to Defendants' competing business. (Compl. ¶ 1.1.) Defendant James Boulding-Bridges ("Bridges") previously worked for Traverse as a supervisory therapist until April 2023. (Compl. ¶ 2.5.) He then left to co-found Defendant Sadler-Bridges Wellness Group ("Sadler-Bridges"), with another former Traverse employee, Raquel Sadler. (Id.) Defendant Haley Campbell ("Campbell") worked as a therapist for Traverse until she resigned in July 2023 to go work for Sadler-Bridges. (Id. at ¶ 2.4.) It appears other therapists working for Traverse also resigned and went to work at Sadler Bridges during this time period as well. (Id. at ¶ 4.13.)

When Campbell resigned, she sent an email to approximately fifty (50) clients to let them know she would be leaving Traverse and going to work for another practice. (Compl. ¶ 4.13.) Campbell offered to continue providing services for clients who wished to follow her, but noted that she would assist any clients interested in finding a new therapist. (Id.) Her email included a list of insurance providers her new practice would accept and provided a non-Traverse email clients could use to contact her. (Id.)

Because Campbell is an associate therapist, she cannot bill insurance directly. (Compl. ¶ 4.15.) Traverse alleges that in order for Campbell to know what insurance she would be providing moving forward, "she would have necessarily conspired with Bridges and [Sadler-Bridges] beforehand . . ." (Id.) Traverse alleges Campbell and other employees' resignation from Traverse was coordinated with Sadler-Bridges with the intent of soliciting clients from Traverse to Sadler-Bridges. (Id. at ¶ 4.18.) Traverse filed this suit bringing claims under the Defend Trade Secrets Act, 18 U.S.C. § 1832 et seq. ("DTSA"), and Washington's Uniform Trade Secrets Act ("UTSA"), as well as an Intentional Interference with Business Expectancy claim. (Compl. ¶¶

5.1-5.18.) Traverse now brings a Motion for Partial Summary Judgment on its DTSA and UTSA claims.

ANALYSIS

A. Summary Judgment Standard

Summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether an issue of fact exists, the Court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-50 (1986). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the nonmoving party. Id. at 248. The moving party bears the initial burden of showing there is no evidence which supports an element essential to the nonmovant's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the movant has met this burden, the nonmoving party then must show there is a genuine issue for trial. Anderson, 477 U.S. at 250. If the nonmoving party fails to establish the existence of a genuine issue of material fact, "the moving party is entitled to judgment as a matter of law." Celotex, 477 U.S. at 323-24.

B. DTSA and UTSA

Traverse alleges Defendants misappropriated trade secrets in violation of the DTSA and the UTSA. Because Traverse fails to meet the threshold requirement of demonstrating the existence of a protectable trade secret, it's Motion for Summary Judgment fails.

The elements of a DTSA and UTSA claim are substantially similar. Compare 18 U.S.C. § 1839(5), with RCW 19.108.010(2). Under the DTSA, "[a]n owner of a trade secret that is

misappropriated may bring a civil action . . . if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). A plaintiff asserting a DTSA or UTSA claim must establish (1) the existence of a protectable trade secret, and (2) facts constituting misappropriate. NW Monitoring LLC v. Holander, 534 F. Supp. 3d 1329, 1336 (W.D. Wash. 2021)."A plaintiff seeking to establish a trade secrets claim under the uniform act has the burden of proving that legally protectable secrets exist." Boeing v.Sierracin Corp., 108 Wn.2d38, 49-50. Before determining whether Defendants' acts constituted misappropriation, the Court must first assess whether there is a protectable trade secret.

Traverse asserts its patient identities and contact information is a protectable trade secret. The Court disagrees. A trade secret is information that (1) derives independent economic value from not being generally known to, and not being readily ascertainable by proper means; and (2) is the subject of efforts that are reasonable under the circumstances to maintain secrecy." RCW 19.108.010(4). "A key factor in determining whether information has 'independent economic value' under the statute is the effort and expense that was expended in developing the information." McCallum v. Allstate Prop. & Cas. Ins. Co., 149 Wn.App. 412, 424 (2009). The allegedly unique, innovative, or novel information must be described with specificity and, therefore, "conclusory" declarations that fail to "provide concrete examples" are insufficient to support the existence of a trade secret. Id. at 425-26. Compilations of customer information may be a trade secret. Ed Nowogroski Ins., Inc. v. Rucker, 137 Wn.2d 427, 440 (1999). "[W]hether a customer list is protected as a trade secret depends on three factual inquiries: (1) whether the list is a compilation of information; (2) whether it is valuable because unknown to others; and (3) whether the owner has made reasonable attempts to keep the information secret." Id. at 442.

Traverse puts forth no evidence to suggest that its patient list constitutes a trade secret; rather, Traverse conflates the mere existence of a patient list that it is legally required to keep confidential per the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") with a trade secret. HIPAA is a federal law that requires entities to protect and keep confidential individually identifiable health information. See 42 U.S.C. § 1320d-2; 45 C.F.R. § 160.103. Neither party disagrees the patient list is a compilation of information – namely contact information – that was kept secret, and that it was done so pursuant to HIPAA. For example, in its Reply brief, Traverse acknowledges "HIPAA is an alternative and independent basis for secrecy of therapy client information . . ." (Reply at 7.) Additionally, the president of Traverse, Catherine Southard's own declaration explains that Defendants knew client identities and contact information was secret because "HIPAA . . . mandates . . . that clients' personal health information be kept secure and secret." (Declaration of Catherine Southard at ¶ 4 (Dkt. No. 75).) Southard also acknowledges that all of Traverse's computers are password protected and physical files containing client information are kept locked in order to be "HIPAA-compliant." (Id. at ¶ 6.) The information was restricted, but the briefs and supporting materials demonstrate this was pursuant to HIPAA, not to keep trade secret information confidential.

The Court also finds that Traverse fails to demonstrate the information is valuable because it is kept secret or that Traverse underwent effort and expense in developing the information. Traverse claims the patient list and contact information is valuable because it is marketing information that competitors could use. Traverse argues that unlike other industries, there is no public database of persons willing and able to purchase therapy services. (Motion at 5-6.) Traverse uses the example of a roofing contractor who sees a house with bad shingles to distinguish itself from other services. (Id. at 6.) But this analogy is flawed as most industries

cannot look at person and determine what their needs are, and most service providers do not walk the street attempting to find potential clients. Nor does Traverse claim it actually used the information to market services to its patients or that it undertook effort and expense to develop the information. Rather, patients were passively marketed to by therapists, including by Defendants, by placing their profile on Psychology Today, where individuals seeking services could peruse and contact therapists. (Declaration of Haley Campbell at ¶ 3 (Dkt. No. 66).) Though Traverse claims it paid for the Psychology Today profiles for its employees, this does not aid its argument. (Southard Decl. at ¶ 2.) Paying for employees' profiles on a website that is utilized to direct potential patients to services demonstrates this is how Traverse marketed its services. What it fails to do is demonstrate that the normal patient information Traverse received as a result of this marketing, and through the natural course of collecting patient information, is a trade secret. Just because Defendants used patient contact information to alert them that they were moving practices and some patients followed their mental health provider to a new practice, does not mean the information is a trade secret. Instead, the undisputed facts suggest that the patient information was compiled through Traverse's normal course of business. The Court finds Traverse fails to demonstrate the patient information is in any way innovative or contains such unique information that competitors would want the information in order to enjoy a competitive advantage.

Traverse argues this case is similar to Trost v. Aesthetic Litetouch, Inc, P.S., 151 Wn.App. 1002 (2009) (unpublished). In Trost, a registered nurse ("RN") at a high-end cosmetic medical practice left her employer to go work at a competing cosmetical medical practice and took with her a list of patient contact information and treatment histories. 151 Wn.App. at *1. The RN used the patient lists to solicit business from individuals who had previously received

treatment from her previous employer. Id. Prior to leaving, her employer forbid her from taking any patient records or copying down any patient information. Id. The Washington Court of Appeals upheld the trial court's granting of summary judgment in favor of the employer on its trade secrets claim reasoning that there was no dispute of fact that the patient list was valuable because even the RN acknowledged it allowed her new employer to solicit business from individuals they knew were likely to get treatment. Id. at *4.

The facts in Trost are distinguishable from those here for three reasons. First, unlike in Trost, there is no agreement that Traverse's patient list has economic value. And Traverse's assertions that it does is belied by its lack of evidence and its tacit acknowledgement it advertised through its providers' Psychology Today profiles. Second, the services at issue are also different. In Trost, the competing services were cosmetic procedures – an industry in which different procedures and treatments are available, are sought by clients at different intervals, and which companies can direct advertisements to by offering discounts or recommending new procedures based on what patients have had in the past. In contrast, here, the services being provided are ongoing mental health services more akin to a patient seeing a primary care doctor than a dermatologist or plastic surgeon. Again Traverse puts forth no evidence to suggest it sent mailings to its patients offering new services or discounts that could be utilized by a competitor. And third, the most critical difference is that the RN acknowledged she worked under the supervision of a physician and therefore had no professional responsibility to inform patients of her new whereabouts. 151 Wn. App. at *1. Here, Defendants were the treating providers of the patients who left Traverse. Defendants thus had a duty of care to inform their patients of their departure from Traverse and to offer to continue providing services should the patients wish to follow.

Because Traverse has failed to adequately support its claims that the patient information is a trade secret the Court DENIES its Motion for Summary Judgment.

Defendants request the Court sua sponte grant summary judgment in its favor regarding Traverse's trade secret claims. "[I]f one party moves for summary judgment and . . . it is made to appear from all the records, files, affidavits and documents presented that there is no genuine dispute respecting a material fact essential to the proof of movant's case and that the case cannot be proved if a trial should be held, the court may sua sponte grant summary judgment to the non-moving party." Cool Fuel, Inc. v. Connett, 685 F.2d 309, 311 (9th Cir. 1982). The Court notes the parties are still entwined in discovery disputes, despite being two months from trial, that are currently before the Court. (Dkt. No. 83.) However, because any information supporting Traverse's assertion that the patient information is a trade secret would be in Traverse's control, not Defendants, the Court GRANTS Defendant's request and sua sponte GRANTS summary judgment in favor of Defendants on Traverse's trade secrets claim.

CONCLUSION

Because Traverse cannot meet the threshold inquiry of demonstrating a protectable trade secret, the Court DENIES its Motion for Summary Judgment. And because it failed to put forth evidence that support its claim, the Court sua sponte GRANTS summary judgment in favor of Defendants and DISMISSES Traverse's DTSA and UTSA claims. Traverse's only remaining cause of action is an Intentional Interference with Business Expectancy claim, which Defendants ask the Court to dismiss given that Traverse's DTSA claim was its only federal cause of action, and the parties are not diverse. The Court DENIES Defendants' request given the how far along the case is and its proximity to trial.

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The clerk is ordered to provide copies of this order to all counsel.

Dated April 19, 2024.

Marsha J. Pechman
United States Senior District Judge